IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7301, 7303 to 7305, 7308 to 7310,
7312, 7314 to 7324, 7326 to 7332, 7334 to 7337,
7339, 7340, 7342, 7344, 7345 of 1999
with
FIRST APPEAL No 7346 to 7355, 7357 to 7366, 7369
to 7384, 7386 to 7405, 7407 to 7410, 7412, 7413 of 1999
with
FIRST APPEAL No 7439 to 7441, 7443 to 7463,
7465, 7466, 7468 to 7470, 7472 to 7475,
7478 to 7486 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO
1 & 2 YES; 3 to 5 NO

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STATE OF GUJARAT

Versus

PUNAMCHAND BHOGILAL SHAH

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Appearance:
MR MUKESH PATEL AGP for Appellant
MR GAURANG H BHATT for Respondent-Claimants

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CORAM : MR.JUSTICE M.R.CALLA
and

MR.JUSTICE D.H.WAGHELA

Date of decision: 15/06/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. These three groups of appeals are arising from the common judgments and orders of the learned Assistant Judge, Sabarkantha in the respective Land Acquisition References No.2390 to 2434 of 1989 (the main case being Land Acquisition Reference No.2393 of 1989), LAR No.2088 to 2155 of 1989 (the main case being LAR No.2105 of 1989) and LAR No.2435 to 2482 of 1989 (the main case being LAR No.2481 of 1989). In all these cases, the date of notification under Section 4 of the Land Acquisition Act, 1894 (`the Act' for short) being the same, i.e. 20.3.1986, and the lands under acquisition also being of the same village, namely, Village Sabli, Taluka Idar, District Sabarkantha, and at the request of learned counsel for the parties, all the appeals were heard together and on the basis of the common arguments, they are decided and disposed by this common judgment. However, First Appeals Nos.7356, 7385, 7406 and 7467 of 1999 are excluded in view of the original respondent claimants having been reported to have passed away and their legal representatives were as yet not brought on record.

2. It is the common ground that the original claimants, who are the respondents herein, are awarded varying amounts of compensation by the impugned judgments and such amounts of compensation for small residential plots and superstructure thereon in each case are not exceeding Rs.30,000/- except in six individual cases.

3. The lands and buildings were acquired on account of the same going into submergence as a result of Guhai Jalagar Project. The Land Acquisition Officer awarded compensation @ Rs.2/- per sq. mtr. for the land and Rs.150/- to Rs.300/- per sq. mtr. for the construction. Upon references being made under Section 18 of the Act, the claimants led oral and documentary evidence regarding the sale instances of nearby village of Bhadreshwar which was only 3 kms. away. Similar lands were acquired from that village by notification dated 26.3.1986 and the judgment awarding compensation @ Rs.100/- per sq. mtr. was also produced at Ex.21. Evidence of sale instance of a small plot of land admeasuring 750 sq. ft. of the same village sold in the year 1980 for Rs.3,000/- was also placed on record at Exhs.28 and 29. Considering

such relevant evidence of the rates fixed in the cases of nearby village and making necessary adjustments in the comparable sale instances of the same village, the market value of the lands in question was fixed at Rs.38/- per sq. mtr. As for the cost of construction of houses which were also to be submerged, the evidence led on behalf of the claimants was discarded but the award of the Land Acquisition Officer having been based on the rates of building materials fixed by the Government in 1982-83, the compensation was increased by 25% in the impugned judgments in view of the normal rise in prices 10% per annum.

4. The learned Assistant Government Pleader mainly assailed the impugned judgments on the grounds that compensation @ Rs.38/- per sq. mtr. (additional compensation @ Rs.36/- per sq. mtr.) for the lands and the rise of 25% in compensation for the residential houses was excessive, that additional compensation @ 12% from the date of notification under Section 4 and grant of solatium even in the case of compensation for the buildings was illegal and that the market value of the buildings would have decreased from year to year on account of the same getting older.

5. The learned counsel placed before us a judgment of this Court dated 30.3.2000 in First Appeals No.7163 to 7198 of 1999 wherein the judgment in respect of lands and residential houses acquired from the same village Sabli for the same purpose of Guhai Jalagar Project by issuing notification under Section 4 on the same date was under challenge. Those appeals challenging the award of compensation @ Rs.36/- per sq. mtr. for the acquired lands and rise @ 25% for the superstructure over and above the compensation awarded @ Rs.150/- to Rs.300/- per sq. mtr. by the Land Acquisition Officer were summarily dismissed by the aforesaid decision only on the ground of involvement of small and petty claims below Rs.30,000/-. The learned counsel for the respondent-claimants submitted that in these appeals also, except in six cases, the amounts involved were small and far below the sum of Rs.30,000/-. It was also pointed out that this Court has in a number of earlier judgments taken the consistent view that where the amount involved in such appeal was small, it should not be admitted in view of the hardships and disproportionate financial burden caused to the respondents by entertaining the appeals.

6. As seen earlier, the market value of the acquired lands was fixed by the trial Court on the basis of the relevant evidence of earlier sale instance of the same

village and the compensation awarded in respect of the lands acquired from the nearby village. The compensation in respect of superstructure was increased by 25% also on the sound basis of the rising prices of building materials. Therefore, we do not find any substance in the submission that the additional compensation awarded by the impugned judgments was in any way excessive. Accordingly, even in the cases involving larger sums of compensation, no case is made out to interfere with the rates at which the compensation is fixed in the impugned judgments.

7. The other legal issue raised by the learned Assistant Government Pleader regarding the award of additional compensation calculated @ 12% per annum on the market value for the period commencing from the date of publication of the notification under Section 4 and the grant of solatium even in respect of the compensation for buildings requires to be considered in light of the statutory provisions of Section 23 (1-A) and (2) of the Act. The said provisions read as under:

> "23 (1-A): In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.
>
> Explanation - .....
>
> (2) In addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition."

Both the additional amount of compensation @ 12% per annum and the amount of solatium @ 30% of the market value are based on the market value of the land and are parts of the compensation required to be awarded for the land acquired under the Act. One of the considerations in determining the amount of compensation to be awarded for the land acquired under the Act, by virtue of the express provisions of sub-section (1) of Section 23, is expenses, if any, consequent to the acquisition and the resultant change of residence and the place of business;

as also the damage, if any, sustained by the person interested by reason of acquisition injuriously affecting the other movable or immovable properties in any manner. Even where the person interested is a tenant of the land and damage is sustained by him by reason of the acquisition injuriously affecting his right as a tenant, the same is required to be considered in determining the amount of compensation to be awarded for the "land". The word "land" is defined in Section 3 (a) of the Act as under:-

> " In this Act, unless there is something repugnant in the subject or context, the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to any thing attached to the earth."

The buildings or superstructures constructed on the lands under acquisition were obviously attached to the earth or permanently fastened to anything attached to the earth. It is nobody's case that the buildings acquired with the land were removable or, in fact, removed by the oustees. The same considerations for compensating the oustees or interested parties apply as they apply in the case of lands only. The scheme and policy of the Act, as spelt out by the above provisions, is not only to fully compensate the oustees and interested persons by taking care of the rise in costs and prices of the "land" after the first notification towards acquisition is published but also to pay additional sum of 30% of the market value by way of solatium in view of the compulsory nature of dispossession.

7.1 A Constitution Bench of the Apex Court has, in a case under the Bombay Requisition Act, 1948 (GRAHAK SANSTHA MANCH v. STATE OF MAHARASHTRA) reported in 1994 (4) SCC 192, wherein the word "land" was defined in identical terms and even the word "premises" was separately defined, taken the view that the definition of "land" was wide and clearly included a building or a part thereof. Earlier in BAI MALIMABU ETC. ETC. v. STATE OF GUJARAT (AIR 1978 SC 515) also, the Supreme Court took the view that the definition of "land" in Clause (a) of Section 3 of the Land Acquisition Act, 1894 would include superstructure, if any, existing upon it.

7.2 In view of the express statutory provisions and the observations of the Supreme Court referred to hereinabove, it can be deduced and has to be held that the entitlement to additional compensation @ 12% per

annum and 30% by way of solatium also applies to the market value determined for the acquired land as also the superstructure and building standing thereon. Therefore, the main contention of the appellant that additional compensation @ 12% per annum and 30% by way of solatium could not have been awarded on the market value of the buildings must fail.

8. The last contention that the market value of the buildings would have decreased from year to year on account of the normal wear and tear and the same getting older has to be stated only to be rejected. As seen earlier, while determining the amount of compensation to be awarded for the land, reasonable expenses incidental to change of residence or place of business have to be taken into account. And the market value of a building does not, in a short span of few years, decrease but, on the contrary, increases on account of the normal rise in the prices of necessary building materials.

9. Thus, we do not find any valid reason to interfere with the impugned judgments and awards on any of the grounds canvassed on behalf of the appellants and, therefore, the appeals are dismissed with no order as to costs.

10. Since the acquisition proceedings have started in these cases since the year 1986, it is expected that the due amounts of compensation shall be paid to the claimants as expeditiously as possible and preferably within three months of the service of this order upon the authorities concerned.

Sd/-

( M.R.CALLA, J.)

Sd/-

( D.H.WAGHELA, J.)

(KMG Thilake)